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EXAMINER

HWU, DAVIS D

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7 UNITED STATES PATENT AND TRADEMARK OFFICE
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10 BEFORE THE BOARD OF PATENT APPEALS
11 AND INTERFERENCES
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14 *Ex parte* ROBERT E. CALLIES and CHARLES H. MEIS
15

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17 Appeal 2008-3453
18 Application 09/872,604
19 Technology Center 3700
20

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22 Decided: January 6, 2009
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25 *Before:* MURRIEL E. CRAWFORD, ANTON W. FETTING and DAVID
26 B. WALKER, *Administrative Patent Judges.*
27

28 CRAWFORD, *Administrative Patent Judge.*
29

30
31 DECISION ON APPEAL
32

33 STATEMENT OF CASE

34 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection
35 of claims 1-9, 13-19 and 21-25. Claims 26-29 have been withdrawn as
36 being directed to a non-elected invention. Claims 10-12 and 20 are objected
37 to as being dependent upon a rejected base claim, but would be allowable if

rewritten in independent form including all the limitations of the base claim and any intervening claims. The rejection of claims 1, 2, 13, 14, 16-19, 21 and 23-25 under 35 U.S.C. § 102(b) as being anticipated by Dunn was withdrawn in the Examiner's Answer mailed November 30, 2007. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented a distribution tube assembly including a main supply line and a distribution tube frame including at least two fluid passageways (Specification [0029], [0030]).

Independent claims 1 and 16 under appeal read as follows:

1. A distribution tube assembly for an irrigation system of the type having a main supply line for conveying fluid, the distribution tube assembly comprising an elongated frame with a first upstream end, a second downstream end and at least two fluid passageways defined therein to permit more than one fluid stream therethrough, each passageway permitting fluid flow from the first upstream end to the second downstream end, at least one of the fluid passageways being in fluid communication with the main supply line, at least another of the fluid passageways being in fluid communication with a second fluid supply line.

16. A distribution tube assembly for an irrigation system of the type having a main supply line for conveying fluid, the distribution tube assembly comprising a distribution tube framing having at least two fluid passageways defined therein and extending substantially throughout the frame between an upstream end and a downstream end to direct fluid flow from the upstream end to the downstream end, at least one of the fluid passageways being in fluid communication with the main supply line, at least another of the fluid passageways being in fluid communication with a second fluid supply line.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

1 Hane US 4,162,041 Jul. 24, 1979
2 The Examiner rejected claims 1-9, 13, 14, 16-19, 21 and 23-25 under
3 35 U.S.C. § 102(b) as being anticipated by Hane.
4 The Examiner rejected claims 15 and 22 under 35 U.S.C. § 103(a) as
5 being unpatentable over Hane.
6 We REVERSE.

7
8 ISSUE
9 Did the Appellants show that the Examiner erred in finding that inner
10 hole 18 of Hane is a “second fluid supply line” as recited in claims 1 and 16?

11
12 FINDINGS OF FACT

13 The Appellants invented a distribution tube assembly for irrigation
14 including at least two passageways (Specification [0005]).

15 “At least one passageway receives fluid from the main supply. The
16 remaining passageway or passageways may receive media from the main
17 supply or from an alternate supply line” (Specification [0006]).

18 “At least one of the adaptor bores may be in fluid communication with
19 the main supply line. Where chemicals and additives are used, one or more
20 bores may be in fluid communication with an alternate supply line”
21 (Specification [0007]).

22 “At least one of the first and second passageways 28, 32 may be in
23 fluid communication with the main supply line 12, which may be connected
24 to a water source. The other of the first and second passageways 28, 32 may
25 be in fluid communication with an alternate supply line, which may be a
26 pipe or hose attached to the main structure. The alternate supply line may be

1 connected to a reservoir containing chemicals, additives, pilot pressure fluid
2 or the like” (Specification [0030]).

3 Separate media from separate supplies flow through the main supply
4 line and the alternate supply line.

5 Hane discloses a liquid sprinkling device 1 including a master pipe 7,
6 a plurality of main pipes 2 connected to master pipe 7 via branch sockets 6,
7 and sub-pipes 3 connected to main pipes 2 via connection sockets 4, 5 (Fig.
8 1; col. 6, ll. 15-22).

9 Connection socket 5 includes cylindrical guide wall 14 that, when
10 placed in the proper rotational position, allows fluid flow from main pipe 2
11 to sub-pipe 3 via inner hole 18, flow hole 19, and hole 15 (Figs. 5-6; col. 6,
12 ll. 46-66).

13 The same fluid flows through master pipe 7 and inner hole 18.

15 PRINCIPLES OF LAW

16 During examination of a patent application, a pending claim is given
17 the broadest reasonable construction consistent with the specification and
18 should be read in light of the specification as it would be interpreted by one
19 of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359,
20 1369 (Fed. Cir. 2004).

21 “A claim is anticipated only if each and every element as set forth in
22 the claim is found, either expressly or inherently described, in a single prior
23 art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814
24 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

The Examiner argues that inner hole 18 of Hane corresponds to the “second fluid supply line” recited in claims 1 and 16 (Examiner’s Answer 7). However, such an interpretation does not give appropriate weight to the proper construction of “second fluid supply line” in light of the express terms of the claim and the specification. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d at 1369.

The Examiner argues that, without further limitations, the second fluid supply line does not require a fluid different from the main supply line (Examiner’s Answer 4, 7). However, the express claim terms “second fluid supply line” includes “second fluid” and “second fluid supply.” Implicit in that choice of phrasing is that the second fluid is separate from the main fluid, and the second fluid supply is separate from the main supply. Moreover, the Specification repeatedly discloses that one media from one supply flows through the main supply line while a second separate media from a second separate supply flows through the alternate supply line, in this case, water and chemicals, respectively. By contrast, fluid from the same supply flows through both master pipe 7 and inner hole 18 of Hane, the corresponding main supply line and second fluid supply line.

We will not sustain the rejection of claims 1 and 16 as being anticipated by Hane. As claims 2-9, 13-15, 17-19 and 21-25 depend from one of claims 1 and 16, we also will not sustain those rejections.

CONCLUSIONS OF LAW

The Appellants did show that the Examiner erred in finding that inner hole 18 of Hane is a “second fluid supply line” as recited in claims 1 and 16.

DECISION

The decision of the Examiner to reject claims 1-9, 13-19 and 21-25 is reversed.

REVERSED

LV:

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